IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

CRL.A.No. 216 of 2000(A)

CRA.33/1996 of SESSIONS COURT, THODUPUZHA
SPECIAL LEAVE GRANTED ON 23-2-2000 AS PER ORDER IN CRL.M.C. 672/2000

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APPELLANT/RESPONDENT/COMPLAINANT:

K.A.ZACARIAS,
KALAPPURAKKAL HOUSE,
THODUPUZHA KARA,
THODUPUZHA VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.E.D.GEORGE

RESPONDENTS/APPELLANT/ACCUSED AND STATE:

1. ABRAHAM THOMAS,
VALIKAPPIL HOUSE,
CONDUCTING RAILWAY OUT AGENCY BUSINESS,
THODUPUZHA.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY (FOR R1)
PUBLIC PROSECUTOR, SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.216 of 2000(A)

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Dated this the 6th day of August, 2007

J U D G M E N T

The appellant is the complainant, who had initiated proceedings under Section 138 of the Negotiable Instruments Act. The trial court convicted the accused and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.95,000/- and in default to undergo rigorous imprisonment for a further period of one month. The appellate court reversed the judgment of the court below and acquitted the accused.

2. It is the case of the complainant that the accused borrowed a sum of Rs.95,000/- from the complainant and subsequently issued the impugned cheque dated 20/05/1992 for the said amount. The cheque when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was replied vide Ext.P5 reply notice. Accused had raised a contention that only a sum of Rs.45,000/- was borrowed and a sum of Rs.47,500/- has been repaid.

3. Evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P5. PW.1 is the complainant himself and PW.2 is the Manager of the drawee bank, who has testified that the cheque was dishonoured for want of funds in the account of the accused. The trial court found that the evidence of PW.1 has established the fact of execution of the cheque and the dishonour of the same and issuance of the lawyer notice etc.. When PW.1 was cross-examined, the suggestions put are to the effect that the complainant was conducting chitty funds and it was towards the chitty amount due by the accused that the blank cheque was issued. The complainant, PW.1 has denied the above suggestions. PW.1 has also testified that the accused is a relative of his and that earlier also the accused had borrowed loans from him and repaid the borrowed amounts. Subsequently, Rs.95,000/- was also borrowed and as the same was not repaid he asked for the same and subsequently, the accused issued Ext.P1 cheque towards discharge of the amounts due. The statement of PW.1 that the accused is his relative and that earlier also he had borrowed amounts and repaid the same has not been disputed in the cross-examination. The contentions

raised in the reply notice and the suggestions put to PW.1 when he was examined and when the accused was questioned under Section 313 Cr.P.C are not consistent. It was in the above circumstances that the trial court convicted the accused as the execution stood proved and the presumptions stood unrebutted.

4. On the other hand, the appellate court has found fault with the complainant for not mentioning the time, date and place of the lending, in the complaint nor in the lawyer notice and, also for not producing any other documents supporting the case of lending and also as there was no independent witnesses to establish the lending. I am not in a position to agree with the reasoning of the appellate court. As per Section 138 of the Negotiable Instruments Act, the dishonour of cheque for want of funds in the account is an offence. The lending etc. is not to be proved like as in a civil case, as the very fact of dishonour for want of funds in the account is sufficient to attract the offence. The contention of the counsel for the respondent based on **Narayana Menon Vs. State of Kerala [2006 (3) KLT 404 (SC)]** has no merits as the accused has no consistent case.

In the circumstances, I find that the complainant has established the execution of the cheque, the dishonour of the same for want of funds in the account of the accused and also non payment despite the receipt of the notice. Hence, the judgment of the appellate court is set aside and the accused is convicted under Section 138 of the Negotiable Instruments Act. He is sentenced to pay a compensation of rupees ninety-five thousand to the complainant and in default to undergo simple imprisonment for three months. The respondent/accused is granted six months time to remit the amount of compensation.

The criminal appeal is disposed of as above.

Sd/-

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.216 of 2000(A)

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J U D G M E N T

6th August, 2007